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MAILED

AUG 11 2011

OFFICE OF PETITIONS

In re Application of :
Alois A. Langer :
Application No.: 10/764106 : **DECISION ON**
Filing or 371(c) Date: 01/23/2004 : **PETITION**
Attorney Docket Number: 3002201-0003-US :

This is a decision in response to the Petition for Revival of Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed July 22, 2011.

This Petition is hereby **dismissed**.

Any further petition for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the Office communication, mailed January 16, 2008. The Office communication set a one (1) month period for reply. No response having been received, the application became abandoned on February 17, 2008. A Notice of Abandonment was mailed August 11, 2008.

Applicable law, Rules and MPEP

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

Applicant, the inventor of the present application, files the present petition and Amendment in response to the Office communication.

A review of office records reveals that an assignment of the invention was recorded with this Office on October 4, 2004, wherein the inventor assigned his entire right, title and interest in the present application to Cardiac Telecom Corporation.

The present petition lacks item (3). As to item (3), Applicant is advised that the statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Analysis

In this instance, petitioner herein transferred his entire ownership interest in the present application to Cardiac Telecom Corporation in an assignment recorded in this Office on October 4, 2004, and thereafter the assignee acted in the application. As such, it is unclear whether petitioner is authorized to act in this application, or whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

Conclusion

The petition is dismissed without prejudice. Petitioner should file a request for reconsideration of petition and provide evidence of petitioner's authority to act in the present application.

Finally, as to the correspondence address, the MPEP 601.03 provides, in relevant part:

Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, the correspondence address may be changed by (A) a patent practitioner of record, (B) an assignee as provided for under 37 CFR 3.71(b), or (C) all of the applicants (37 CFR 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71. See 37 CFR 1.33(a)(2).

A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/DLW/

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